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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

JUL 30 1991

REPLY TO ATTENTION OF:

5HS-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Waukegan Tar Pit

Dear Sir or Madam:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within five (5) business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within seven (7) calendar days of receipt of the Order.

If you have any questions regarding the Order, feel free to contact Sean Mulroney, Assistant Regional Counsel, at (312) 886-7150 or Cindy Nolan, On-Scene Coordinator, at (312) 886-6246.

Sincerely yours,

for 
David A. Ullrich, Director
Waste Management Division

Enclosure

cc: William Child, Illinois Environmental Protection Agency

bcc: Tom Pernell, ORC (5CS-TUB3)
Sean Mulroney, ORC Attorney, ORC (5CS-TUB3)
Cindy Nolan, OSC (5HS-12)
Carol Graszer, ESS (5HS-12)
Pamela Schafer, ESS (5HS-12)
Oliver Warnsley, RP-CRU (5HS-TUB-7)
EERB Read
Tony Lesser, Public Affairs (5PA-14) w/out attachments
Sheila Huff, Department of Interior
Vince D'Aloia (5MFS-14)
Tony Audia (5MFS-14)
EERB Site File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	Docket No. V-W- '91 -C- 115
)	
WAUKEGAN TAR PIT SITE)	ADMINISTRATIVE ORDER
)	PURSUANT TO SECTION 106
)	OF THE COMPREHENSIVE
Respondents:)	ENVIRONMENTAL RESPONSE,
)	COMPENSATION, AND
)	LIABILITY ACT OF 1980
NORTH SHORE GAS COMPANY)	as amended, 42 U.S.C.
ELGIN, JOLIET & EASTERN RAILWAY CO)	Section 9606(a)
NORTH SHORE SANITARY DISTRICT)	

PREAMBLE

This Administrative Order (Order) is issued on this date to Respondents, North Shore Gas Company; Elgin, Joliet & Eastern Railway Company; and North Shore Sanitary District.

It is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Waste Management Division, Region V, by Regional Delegation 14-14-A and 14-14-B.

By copy of this Order the State of Illinois has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondents to undertake and complete emergency removal activities to abate an imminent and substantial endangerment to the public health and welfare or the environment that may be presented by the actual or threatened release of hazardous substances at the site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Waukegan Tar Pit Site (Site) is located in the northeast quadrant of a vacant lot bounded on the north by Dahringer Road, on the west by Pershing Road, on the east by the Elgin, Joliet & Eastern Railway Company (EJ&E) line, and on the south by a parcel of land owned by the City of Waukegan. The Site is situated in an industrial area and is now bounded on all sides by a fence.
2. Currently, a portion of the Site is owned by the North Shore Sanitary District (NSSD) and a portion is owned by EJ&E. Previously, the property was divided into two parcels, the eastern parcel was owned by EJ&E and the western parcel was owned by North Shore Gas Company (NSG). NSG operated a coal gasification plant on the western portion of the Site. The plant has since been demolished.
3. In July of 1988, the local fire department and the Illinois Environmental Protection Agency (IEPA) responded to a fire on a pit located in the northeastern portion of the property described above. Samples of the tar collected by the IEPA indicated the presence of volatile organic compounds with a flash point of 60 degrees Fahrenheit. Based on the Illinois Emergency Services Disaster Agency (ESDA) report dated July 13, 1988 the IEPA determined that, at that time, there were no public safety concerns at the tar pit.
4. In 1990, the U.S. EPA received reports from private citizens that migrating waterfowl and other wildlife were becoming trapped and dying in the tar. The U.S. Fish and Wildlife Service was also investigating these reports.
5. A site assessment was performed by the U.S. EPA and Technical Assistance Team (TAT) in September 1990. A pond approximately 125 feet long by 60 feet wide was observed in the northeastern portion of the site. The pond consisted of 4 to 6 inches of water overlying a pit of tar of unknown depth. The U.S. EPA and TAT observed stressed vegetation and tar oozing to the soil surface beyond the visible boundaries of the pond. Samples collected from the tar and water indicate the presence of high levels of volatile organic compounds including benzene. A tar sample collected north of the pond had a flash point of 72 degrees Fahrenheit.

6. The potentially responsible parties (PRPs); NSSD, NSG, and EJ&E, were given verbal notification on September 19, 1990 by the U.S. EPA to restrict access to the Site including the tar pit by humans and wildlife and took prompt action on September 20, 1990 to install a fence to enclose the property and string flags across the pond to deter migrating blue heron and other waterfowl from landing. The fence was completed on September 28, 1990.
7. On March 11, 1991 an Administrative Order by Consent was issued to the potentially responsible parties (PRPs). The Order required the Respondents to conduct an extent of contamination study to define the vertical and lateral extent of hazardous substances in the tar pit.
8. As of the date of this Order, Respondents have not satisfactorily completed the Extent of Contamination survey as required by the March 11, 1991 Administrative Order on Consent.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. Waukegan Tar Pit is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Each Respondent arranged for disposal or transport for disposal of hazardous substances at the Waukegan Tar Pit Site, or is a past or present owner or operator of the facility. Each Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).
4. Volatile organic compounds, including benzene, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. For the purpose of this Order, tar is defined as the analytical detection of total polyaromatic hydrocarbons (PAHs), carcinogenic PAHs categorized as A, B1, B2, and/or volatile organic compounds, and is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
6. Low flash substances in the tar pit, the presence of hazardous substances including benzene, and the actual or threatened release to drinking water constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

7. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.

8. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA, and are reasonable and necessary to protect the public health, welfare and the environment.

9. The conditions present at the Facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.415(b)(2). These factors include, but are not limited to, the following:

- a. actual or potential exposure to hazardous substances by nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;**

This factor is present at the Facility due to the existence of elevated levels of organic compounds, including benzene, in the tar. Until September 28, 1991, access was unrestricted. Migratory water fowl, including blue herons, have died as a result of becoming trapped in the tar. Despite the existence of a fence at the site, other forms of wildlife may use the pond as a drinking water source. Vegetation surrounding the pit has been stressed.

- b. actual or potential contamination of drinking water supplies or sensitive ecosystems;**

This potential for contamination is present at the Facility due to the existence of groundwater at approximately three and one half feet beneath the surface of the pit. The suspected depth of the pit is at least three feet. Groundwater flow is toward Lake Michigan, a drinking water source. Organics contained in the pit may leach into the groundwater and subsequently migrate into Lake Michigan.

- c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;**

This factor is present at the Facility due to the potential existence of excessive heat in the summer which has caused the tar to migrate to the soil surface. This migration combined with excessive heat create the potential for the release of volatile organic contaminants into the air.

d. threat of fire or explosion;

This factor is present at the Facility due to the existence of the low flashpoint of 72 degrees Fahrenheit tar in the pit. A Waukegan Fire Department report indicates that the pit caught fire in July of 1988. The report describes a great volume of black smoke emanating from the fire. IEPA, responded to the fire and collected tar samples which had a flash point of 60 degrees Fahrenheit.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that Respondents undertake the following actions at the Facility:

1. Within twenty-one (21) calendar days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order as well as a schedule for implementation. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondents shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.
3. Respondents shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within five (5) business days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents. In the event U.S. EPA disapproves of a selected contractor, Respondents shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.

4. Within seven (7) calendar days after U.S. EPA approval of the Work Plan, Respondents shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondents to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondents to perform, and complete within sixty (60) calendar days after approval, at a minimum, the following removal activities:

- a. Remove and dispose of all visible tar. Within three (3) business days of the completion of the removal of the visible free tar, the OSC or her designated alternate will inspect the site and determine compliance with the requirement.
- b. Conduct a full extent of contamination study. Due to the inadequacy of the extent of contamination study that was conducted pursuant to the earlier Administrative Order on Consent, the Respondents are required to accurately determine the extent of contamination of the tar, as identified in paragraph 5 of the determinations section, from the tar pit to the surrounding property. This requirement necessitates sampling north of Dahringer Road, east of the railroad tracks, as well as to the west.

5. All materials containing hazardous substances, pollutants or contaminants removed pursuant to this Order shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.

6. On or before the effective date of this Order, the Respondents shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. The U.S. EPA has designated Cindy Nolan of the Emergency and Enforcement Response Branch, Response Section II, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondents and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.

7. The U.S. EPA and the Respondents shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be verbal, but shall promptly be reduced to writing.

8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondents at the facility.

9. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

10. This Order and all instructions by the U.S. EPA On-Scene Coordinator or her designated alternate that are consistent with the National Contingency Plan and this Order shall be binding upon the Respondents.

11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondents, Respondents shall obtain all necessary access agreements. In the event that after using their best efforts Respondents are unable to obtain such agreements, Respondents shall immediately notify U.S. EPA. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate.

12. Respondents shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.

13. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law.

14. This Order shall be effective seven (7) calendar days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the third (3rd) calendar day following the day of the conference unless modified in writing by U.S. EPA.

15. On or before seven (7) calendar days of the effective date of this Order, Respondents shall provide notice, verbally or in writing, to U.S. EPA stating their intention to comply with the terms of this Order. Verbal notification must be followed in writing within three (3) business days. In the event any Respondents fail to provide such notice, those Respondents shall be deemed not to have complied with the terms of this Order.

16. Copies of all records and files relating to hazardous substances found on the site shall be retained for six years following completion of the activities required by this Order and shall be made available to the U.S. EPA prior to the termination of the removal activities under this Order.

17. Respondents shall provide a written bi-weekly progress memorandum to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress memorandum shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondents and shall describe all significant work items planned for the next month.

18. The Respondents shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a

discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within thirty (30) calendar days of completion of the work required by the U.S. EPA.

19. All notices, reports, memorandums and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

one copy Cindy Nolan
On-Scene Coordinator
U.S. EPA (5HS-12)
230 South Dearborn Street
Chicago, Illinois 60604

one copy Sean Mulroney
Assistant Regional Counsel
U.S. EPA (5CS-TUB-3)
230 South Dearborn Street
Chicago, Illinois 60604

20. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Determinations and Findings is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 W. Jackson Blvd., Third Floor, Chicago, Illinois. Please contact Sean Mulroney, Assistant Regional Counsel, at (312) 886-7150 to review the Administrative Record. An index of the Administrative Record is attached hereto.

OPPORTUNITY TO CONFER

With respect to the actions required above, Respondents may within five (5) business days after issuance of this Order, request a conference with the U.S. EPA. Any such conference shall be held within fourteen (14) calendar days from the date of request unless extended by mutual agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person, or be represented by an attorney or other representative. If any Respondent desires such a conference, the Respondent shall contact Sean Mulroney, Assistant Regional Counsel, at (312) 886-7150. If such a conference is held, Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which Respondents are ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within seven (7) calendar days following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within seven (7) calendar days following the receipt of this Order. Any such writing should be directed to Sean Mulroney, Assistant Regional Counsel, at the address cited above.

Respondents are hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

PENALTIES FOR NONCOMPLIANCE

Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondents to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

By: Jodi Kraub
for David A. Ullrich, Director
Waste Management Division
United States Environmental
Protection Agency
Region V

July 30, 1991

RECIPIENTS OF 106 UNILATERAL ORDER

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